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UNITED STATES DISTRICT COURT  
DISTRICT OF ARIZONA

Smith Enterprise, Inc.,

Plaintiff,

VS.

Jason Edward Hammonds,

Defendant.

No. 2:13-cv-01773-GMS

**REPLY MEMORANDUM IN FURTHER  
SUPPORT OF MOTION FOR  
SANCTIONS**

Mr. Hammonds<sup>1</sup> hereby submits this reply memorandum in further support of his Motion for Sanctions Pursuant to Fed. R. Civ. P. 11 (the “Motion”), and states as follows:

## I. Introduction

SEI’s Response to the Motion (the “Opposition Memo”) relies on a series of overly simplistic and grossly misleading arguments in an effort to divert the Court’s attention away from the actual issues raised by the Motion – namely, SEI’s efforts to fit a square peg in a round hole by manufacturing jurisdiction with legally and factually unsupportable allegations. Although SEI stubbornly contends otherwise, the Motion does not take issue with the adequacy of SEI’s Complaint (that issue is fully briefed and before the Court on Mr. Hammonds’ motion to dismiss).<sup>2</sup> Rather, the Motion argues that SEI (and its counsel)

<sup>1</sup> Terms not defined herein shall have the meaning set forth in the Motion.

<sup>2</sup> The Opposition Memo contends that Mr. Hammonds “raised *the exact same arguments* in the motion to dismiss that he has raised here, namely that SEI failed to state

1 knew Mr. Hammonds did not make the statements at issue as a “competitor” (but rather as  
2 a disgruntled customer), but ignored this inescapable fact in making the strategic decision  
3 to bring this action in federal court. On these points, the Opposition Memo is devoid of  
4 any substantive response. As discussed below, sanctions against SEI (and its counsel) are  
5 both appropriate and necessary.

7 **II. The Opposition Memo Confirms that SEI Lacks Any Evidentiary Support for**  
8 **its “Competitor” Allegations**

9 The question before the Court is whether SEI, at the time the Complaint was filed,  
10 had a good faith basis/evidentiary support to assert that Mr. Hammonds is (1) a competitor  
11 of SEI’s and (2) that he made the statements at issue for the purpose of influencing  
12 customers to buy his competing goods or services. See eMove Inc. v. SMD Software Inc.,  
13 No. CV-10-02052, 2012 WL 1379063, at \*5 (D. Ariz. Apr. 20, 2012). There is no  
14 question that SEI’s allegations lack such support, and the Opposition Memo serves only to  
15 confirm this inescapable fact.

16 To support its “competitor” allegations, SEI makes a series of arguments that both  
17 border on the absurd and demonstrate a fundamental (and dangerous) misunderstanding of  
18 the Lanham Act. In short, SEI attempts to support its allegations by arguing: (1) Mr.  
19 Hammonds has posted on internet forums regarding his purchase and assembly of  
20 firearms parts; (2) Hammonds sells firearms and so does SEI; (3) Mr. Hammonds is  
21

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22 a claim because Hammonds is not a competitor” (emphasis in original). See Opposition  
23 Memo, p. 10. Even a cursory review of the two motions, however, reveals that this  
24 assertion is meritless. As set forth herein and in Mr. Hammonds’ reply memorandum in  
25 further support of the motion to dismiss, Mr. Hammonds’ motion to dismiss argues  
26 (among other things) that SEI failed to adequately allege the elements of a Lanham Act  
27 claim whereas here Mr. Hammonds argues that SEI lacked any legal or evidentiary  
28 support for such allegations. How SEI manages to repeatedly conflate the two motions  
and the arguments raised therein is beyond belief.

1 purportedly characterized as a firearms manufacturer pursuant to an ATF circular; (4) Mr.  
2 Hammonds and SEI compete in the same fashion as Best Buy and Radio Shack; (5) the  
3 fact that Mr. Hammonds was “once” a customer of SEI’s is irrelevant; and (6) the fact that  
4 Mr. Hammonds is employed full-time as an assistant professor is likewise irrelevant  
5 because many people have more than one job.<sup>3</sup> All of these arguments miss the mark.

6  
7 As a preliminary matter, even if SEI were correct that Mr. Hammonds is a  
8 “competitor” and/or a “manufacturer” (he is not), the Complaint would still fall flat and  
9 sanctions would still be warranted. The reason for this is simple: the Opposition Memo  
10 plainly ignores that status as a “competitor” alone is insufficient to support a Lanham Act  
11 product disparagement claim. Rather, a plaintiff must have evidentiary support that a  
12 defendant is both a competitor *and* that the statements at issue were made to persuade  
13 customers to purchase said competitor’s products.

14  
15 Somewhat ironically, it is SEI itself that highlights this deficiency through its  
16 argument that Best Buy and Radio Shack are competitors even though they sell different  
17 brands of speakers. This is certainly true – both Best Buy and Radio shack compete for  
18 the sale of portable bluetooth speakers. It is likewise true that, if Radio Shack were to  
19 disparage the quality of Best Buy’s portable Bluetooth speakers in an effort to drive  
20 customers to purchase its own speakers, Best Buy would likely have a Lanham Act  
21 product disparagement claim against Radio Shack. A small change as to the products at  
22 issue, however, demonstrates the fallacy of SEI’s argument. Rather than speakers, Radio  
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25  
26 <sup>3</sup> Notably, most of these arguments appear to be based on SEI’s post-Complaint  
27 investigation or in direct response to Mr. Hammonds’ declaration in support of the  
28 Motion. It is therefore unclear what evidentiary support SEI purportedly had prior to  
filing the Complaint such that SEI could allege that, “upon information and belief,” Mr.  
Hammonds is a competitor of SEI’s.

1 Shack now makes a disparaging remark regarding the quality of the washing machines  
2 sold by Best Buy. Radio Shack does not sell washing machines, and because of this Best  
3 Buy could not maintain a Lanham Act claim as the statement at issue was not made to lure  
4 customers into buying Radio Shack's competing products. While a common law  
5 disparagement claim may exist, federal jurisdiction will not.

7 Here, SEI alleges that Mr. Hammonds (an alleged competitor) disparaged the build  
8 quality of its yet-to-be-delivered M14 receivers. Importantly, SEI does not allege that Mr.  
9 Hammonds builds and/or sells his own branded M14 receivers or that Mr. Hammonds is  
10 in the business of selling third-party branded M14 receivers. Rather, SEI alleges that Mr.  
11 Hammonds 'assembles' rifles (from component pieces bought from, among other entities,  
12 SEI) and occasionally sells these completed rifles to others. Because SEI itself sells a  
13 complete rifle, the Opposition Memo attempts to connect the dots and label Mr.  
14 Hammonds as a competitor. SEI does not, however, allege that Mr. Hammonds made any  
15 disparaging remarks regarding SEI's complete rifle – the only 'disparagement' at issue in  
16 this action (as framed by the Complaint) is to SEI's M14 receivers. Absent some  
17 allegation that Mr. Hammonds machines his own M14 receivers or is perhaps a licensed  
18 reseller of Fulton Armory, LRB, or Springfield Armory (SEI's actual competitors)  
19 receivers, SEI's purported evidentiary support for the proposition that Mr. Hammonds is a  
20 "competitor" is meaningless. Regardless of whether Mr. Hammonds could fairly be  
21 labeled a competitor (he cannot), SEI has not presented (nor could it offer) a scintilla of  
22 support for the notion that Mr. Hammonds assembles and/or sells competing M14  
23 receivers.

1       None of SEI's remaining arguments warrant serious scrutiny. Although SEI's  
2 fascination with cataloguing Mr. Hammonds' online life is somewhat disturbing, the  
3 bullet point items presented by the Opposition Memo are entirely consistent with the  
4 Motion and Mr. Hammonds' declaration. The forum posts referenced by the Opposition  
5 Memo establish that Mr. Hammonds knows how to assemble component pieces of a  
6 firearm and that, as a hobbyist, he may have sold a handful of rifles after assembly. Such  
7 knowledge and/or occasional sale, however, does not magically transform consumer into  
8 competitor. If the Court were to accept SEI's contention, then millions of firearms owners  
9 across the United States would be labeled as "competitors" of every major firearms  
10 manufacturer/seller. Anyone that has ever cleaned their personal firearm (which requires  
11 disassembly and, to the extent such person desires the firearm to function again,  
12 reassembly) or who sold /traded it for another could be haled into federal court to face  
13 Lanham Act claims. Such a result would not only be ridiculous; it would likewise be  
14 untenable. Moreover, as stated above, ***none*** of the forum posts referenced in the  
15 Opposition Memo discuss Mr. Hammonds' machining, building, and/or sale of M14  
16 receivers (for the obvious reason that Mr. Hammonds, an assistant professor not otherwise  
17 employed in the firearms industry, does not machine, build, or otherwise sell M14  
18 receivers) – the actual product at issue in this litigation. To accept the referenced forum  
19 posts as "evidence" that Mr. Hammonds is a "competitor" of SEI's would be to set a  
20 dangerous precedent as every resident of the United States could conceivably be  
21 considered a "competitor" of some corporation by virtue of tinkering with a product  
22 and/or later selling it at a garage sale. The forum posts referenced in the Opposition  
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1 Memo and the fact that Mr. Hammonds has occasionally sold one of his rifles do nothing  
2 to bolster SEI's claims that Mr. Hammonds is a competitor.  
3

4 SEI's assertions that customers can likewise be competitors and that many people  
5 in this country have second jobs are puzzling. Certainly, both scenarios are possible in a  
6 country of 300 million, but Rule 11 does not task SEI with speculation and/or  
7 brainstorming as to 'possible' arguments that may bolster the allegations of the  
8 Complaint. The question before the Court is whether SEI knew that its claims lacked  
9 evidentiary support before its attorneys affixed their signatures to the Complaint, not  
10 whether its attorneys can now dream up scenarios wholly contradictory to Mr.  
11 Hammonds' declaration and common sense itself. Rule 11 does not deal with the  
12 theoretical – the evidence available to SEI prior to filing suit is that Mr. Hammonds was a  
13 customer of SEI's distributor, that Mr. Hammonds was employed full-time as an assistant  
14 professor (confirmable by a simple internet search), that Mr. Hammonds was not affiliated  
15 with any firearms company, that Mr. Hammonds does not hold any special licenses to  
16 machine/build M14 receivers (again confirmable by a simple internet search), that Mr.  
17 Hammonds posted a remark that SEI believed to be disparaging, and that SEI caused Mr.  
18 Hammonds' order to be cancelled as a result of Mr. Hammonds' statement. Rule 11  
19 clearly provides that SEI cannot rewrite these *facts* (all of which SEI and its counsel  
20 knew, as demonstrated by the pre-suit letter sent to Mr. Hammonds by SEI's counsel) in  
21 favor of speculation.  
22

23 Finally, SEI's contention that Mr. Hammonds "admitted that he is a manufacturer"  
24 by virtue of the referenced ATF circular is meritless and smacks of the underhanded  
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1 techniques SEI has utilized since before this suit was filed. If SEI had endeavored to  
2 actually read the circular (as opposed to simply quoting one passage out of context), it  
3 would know that the circular deals with issues not present here and is irrelevant to the  
4 facts before the Court. More importantly, however, is the fact that SEI's "manufacturer"  
5 contentions are irrelevant to whether Mr. Hammonds is a "competitor" of SEI's. Even  
6 assuming arguendo that the mere assembly of component pieces into a firearm constitutes  
7 manufacturing subject to ATF licensing requirements (it does not),<sup>4</sup> status as a  
8 manufacturer does not equate to status as a competitor. As stated above, SEI does not  
9 allege (nor can it) that Mr. Hammonds machines/builds M14 receivers or that he sells  
10 competing M14 receivers. Absent such allegation (and evidence supporting such  
11 allegation), Mr. Hammonds' status as a purported "manufacturer" under the ATF  
12 regulations is irrelevant. Of course, the point is largely moot because, under any reading  
13 of the referenced circular, Mr. Hammonds is not a "manufacturer" as he does not weld,  
14 affix, and/or machine aftermarket parts to firearms (the actual issue before the ATF).  
15 Nevertheless, even if by some tortured reading of the circular it could be said that Mr.  
16 Hammonds is a "manufacturer" of firearms, this does not lend any support to the  
17 contention that Mr. Hammonds is a competitor who made the statements at issue to drive  
18 customers to purchase his own competing M14 receivers.

### 23     **III. Conclusion**

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<sup>4</sup> Again, SEI's contentions run contrary to common sense. If SEI were correct, then  
25 every firearms owner in the United States who disassembles, cleans, and reassembles  
26 his/her firearms would be deemed a "manufacturer" by the ATF and would require  
27 extensive licensing to simply possess such firearms. In short, SEI contends that millions  
28 of legal firearms owners in the United States are actually violating the law and are subject  
to serious sanction/imprisonment. This argument strains credulity and is truly  
irresponsible coming from a firearms manufacturer such as SEI that purports to defend the  
Second Amendment and its associated freedoms.

1 WHEREFORE, Mr. Hammonds respectfully requests that the Court enter an Order:

2 1. Granting this motion for sanctions pursuant to Federal Rule of Civil  
3 Procedure 11(c) against SEI and its counsel;

4 2. Awarding Mr. Hammonds his attorneys' fees incurred, and to be incurred, in  
5 this matter;

6 3. Assessing additional monetary sanctions against SEI and its counsel for  
7 affirmatively misrepresenting jurisdictional allegations to the Court for the  
purpose of creating federal question jurisdiction; and

8 4. Granting such other relief as is necessary and proper.<sup>5</sup>

9 Dated: November 26, 2013

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15 By: s/ Daniel DeSouza

16 Daniel DeSouza, Esq. (*admitted pro hac vice*)  
Florida Bar No. 19291

17 *Attorneys for Defendant*

18 **CERTIFICATE OF SERVICE**

19 I hereby certify that on November 26, 2013, I electronically filed the foregoing  
20 document with the Clerk of the Court using CM/ECF.

22 By: s/ Daniel DeSouza  
23 Daniel DeSouza

24 ACTIVE: 5246949\_1

25 <sup>5</sup> Similar to Mr. Hammonds' motion to dismiss, SEI requests oral argument on this  
Motion. As with the motion to dismiss, the issues here are straightforward and it is  
difficult to imagine what benefit will be achieved through oral argument (other than  
subjecting Mr. Hammonds to additional fees and costs associated with a hearing in  
Arizona). Should the Court be inclined to schedule oral argument, Mr. Hammonds  
requests that both this Motion and the motion to dismiss be heard together on the same  
day.